IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8828 of 1995
With
SPECIAL CIVIL APPLICATION No. 8829 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT STATE PENSIONERS FEDERATION - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR AM RAVAL for Petitioner(s)
MR SIRAJ GORI, AGP for Respondent(s)

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 04/08/2006

ORAL JUDGMENT

1. These petitions are filed for and on behalf of retired teachers of Government schools. Though

several prayers are made in the petitions, learned advocate for the petitioners confines the challenge of the petitioners to the question of grant of higher pay-scale to the petitioners pursuant to the Government resolution dated 5.7.91. In this regard, the petitioners question the validity of condition No.3.29 contained in Government resolution dated 16.8.94. It may be noted that other unrelated prayers are not pressed in these petitions.

2. The petitioner of Special Civil Application No.8828 of 1995 is an association of retired teachers claiming above mentioned benefits. By resolution dated 5.7.91, the Government provided for certain reliefs in favour of teachers who on account of non-availability of promotional posts were stagnating in the same scale for number of years. Upon fulfillment of certain conditions, teachers were given next higher scale on completion of 9, 18 and 27 years of stagnation. Subsequently, however, by a resolution dated 16.8.94, the Government finding that the financial burden flowing from

its resolution dated 5.7.91 is difficult to sustain, provided for certain modifications in its earlier policy of granting higher pay scale. It is not in dispute that for those of the employees who had received or were entitled to receive benefits under resolution dated 5.7.91 but had retired prior to 1.8.94 such benefits were not to be withdrawn.

3. It is the case of the petitioners that all the teachers concerned in these petitions have retired prior to 1.8.94. The main question that is required to be considered in these petitions is whether the teachers can retain both the benefits of selection grade as well as higher pay-scale. Though the learned advocate for the petitioner has brought to the notice of this Court a decision dated 25.8.99 passed by a learned single Judge of this Court (Coram: R.Balia, J.) in Special Civil Application No.10204 of 1998 as also that of another learned single Judge (Coram: H.K.Rathod, J.) dated 19.12.2001 in Special Civil Application No.8871 of 1999 and allied matters, by virtue of

a subsequent order dated 14.10.2004 passed by a Division Bench of this Court in Letters Patent Appeal No.1073 of 2004, the issues have taken a somewhat different turn.

4. The decision of the learned single Judge holding that the Government had no authority to issue a clarificatory circular dated 16.10.93 was not approved by the Division Bench. It was held that the Government had the power and authority to issue such a circular. It may be noted that by the said circular dated 16.10.93, in the earlier GR dated 5.7.91 words “selection grade” were added along with senior scale for the purpose of compelling the employee to choose either between the higher pay-scale as envisaged in the GR or to retain selection grade/senior scale. The Division Bench, however, found that the concerned employees were granted the benefit of selection grade in the years 1976 to 1979 i.e. before the Government issued its amending resolution dated 26.12.85. The Division Bench found that under the said resolution the trained primary teachers were held entitled to

get selection grade upon completion of 17 years of continuous service. It was therefore found that such benefits were to be considered from 1.7.83 and that therefore on and from that date onwards, selection grade became equal to senior scale. The Bench, therefore, while allowing the appeal partially found that the original petitioners therein cannot be made to surrender the benefits of GR dated 5.7.91.

5. Learned advocate Shri Raval for the petitioners submitted that all the petitioners have retired long back and are waiting for their final retiral benefits since years. He submitted that through there was stay granted by this Court against the recovery of the amount already paid, the respondents disregarding the such interim orders have adjusted the alleged over payments from the pensionary benefits of the teachers. He, therefore, submitted that the petitioners should be given benefits of the decisions of this Court.

6. Learned AGP Shri Gori for the respondents submitted that only to the extent the Division

Bench of this Court found the employees entitled to retain the benefits can the petitioners claim the reliefs. He submitted that if the petitioners were granted selection grade after 1985, the ratio laid down by the Division Bench in the above mentioned decision would ensure that the petitioners cannot retain such excess benefits.

7. Having heard the learned advocates appearing for the parties, the issues arising in these petitions need not detain this Court long. A Division Bench of this Court has already come to a definite conclusion in this regard. It is made clear that though the Government had the power to issue amending/clarificatory circular dated 16.10.93, with respect to those teachers who had already got selection grade, prior to the amending circular dated 26.12.85, the employees are entitled to retain the selection grade benefit as well as seek higher pay-scale pursuant to the resolution dated 5.7.91. To that extent, the petitioners' claim must succeed. However, if there are any teachers who

had got selection grade after GR dated 26.12.85, such teacher cannot retain both the benefits i.e. of selection grade as well of higher pay scale. This has been made amply clear by the Division Bench.

8. For want of individual details of each employee, though this Court does not give specific individual directions, in the interest of justice, the respondents are directed to consider the case of each individual concerned employee herein and apply the ratio laid down by the Division Bench of this Court as noted herein-above. The respondents shall examine each individual case as provided hereinabove and the conclusion reached therein shall be communicated to the concerned teachers or their heirs. This exercise shall be done expeditiously and in any case not later than three months from the date of receipt of a copy of this order.

9. If any of the teachers are held entitled to release of the amounts withheld from the pensionary benefits, the same shall be paid

within the said period with simple interest at the rate of 10 per cent from the date such amount fell due and payable till its actual payment. Ultimate conclusion of the Government, if aggrieves any individual teacher, it will be open for him to seek redressel of the grievance in accordance with law.

10. With the above directions, the petitions are disposed of. Rule is made absolute to the above extent with no order as to costs.

(Akil Kureshi, J.)

(vjn)